



Getting it right? The Doha Round proposals on international food aid

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A commentary on the proposals for food aid circulated by the Chair of the WTO Agriculture Negotiating Committee in the August 1, 2007 Revised Draft Modalities for Agriculture²

I. Introduction

There is a widespread perception that the WTO Doha Development Round (DDR) negotiations have stalled. In fact, as in the case of food aid which is part of the agricultural export subsidy negotiations, there are continuing efforts at a technical level to draft a set of modalities which members would be prepared to accept as part of a wider agricultural agreement. The Chairman of the Agriculture Negotiating Committee circulated a draft set of modalities on 30th April 2007, including proposals for food aid that could provide the basis of a new article 10.4 of an agricultural agreement.³ The starting point is what was agreed in Hong Kong in December 2005 – the creation of a ‘safe box’ for emergency food aid to ensure that there is no unintended impediment to dealing with emergency situations and disciplines for preventing other non-emergency food aid from having trade distorting effects. The draft sought to accommodate the positions of different members on many issues. However, there were still unresolved issues such as the status of food aid credits, the roles of governments, the UN, regional bodies and NGOs within the Safe Box – who can do what and when – and the treatment of monetisation.⁴

The revised draft of August 1, 2007 seeks to take account of responses on these unresolved issues by members such as the G20 group of developing countries,⁵ the Cairns Group⁶ and the June 2007 G4 discussions in Potsdam,⁷ where the EU and the US tried to reach an understanding on a wide range of DDR issues, including food aid.

The revised text is a further step towards a draft agreement. Nevertheless, some of the wording is still ambiguous, open to different interpretations, and needs clarification. Where there are bracketed wordings, the implications of alternative wordings need careful consideration. Acceptance of optional wordings that allow the greatest flexibility to donors, if combined with a liberal interpretation of the new rules, could in practice allow virtually all forms of existing food aid practices, excepting loans, to continue. There is a distinct possibility that the new modalities would prove inadequate to achieve the original aim of the Doha Development Round – to eliminate trade distorting practices within a framework that also facilitates development. As those acquainted with the course of the negotiations will appreciate, the issues are all in the details of wording.

The purpose of this commentary is to explore what these details may imply in practical terms. The commentary is set out in the form of an annotated version of the draft text – phrases and sections of the text subject to comment are both highlighted in red and underlined. The commentary follows in the form of a text box. This commentary focuses on what are seen as potential ambiguities in the text and the implications of alternative or optional bracketed

wordings. Some key documents referred to in the commentary, and which may not be readily available to the reader, are included as appendices: OECD DAC definitions of tying status; and WTO member positions on the still contentious issue of monetisation. The footnotes in Section II are part of the original WTO text, whereas the endnotes, including references, are part of the commentary.

II. Annotated Version of DRAFT MODALITIES FOR AGRICULTURE, ANNEX F Possible New Article 10.4 of the Agreement on Agriculture International Food Aid

1. Members reaffirm their commitment to maintain an adequate level of international food aid (hereinafter referred to as food aid^a), to take account of the interests of food aid recipients and to ensure that the disciplines contained hereafter do not unintentionally impede the delivery of food aid provided to deal with emergency situations. Members shall ensure the elimination of commercial displacement caused by food aid.

General Provisions

2. Members shall ensure that all food aid transactions, whether in the Safe Box or outside, are provided in conformity with the following provisions:

- (a) they are needs-driven;
- (b) **they are provided in fully grant form;**
- (c) they are not tied directly or indirectly to commercial exports of agricultural products or of other goods and services;
- (d) they are not linked to the market development objectives of donor Members; and
- (e) **agricultural products provided as food aid shall not be commercially re-exported.** Non-commercial re-exportation is permissible, but only where, for logistical reasons and in order to expedite the provision of emergency food aid for another country in an emergency situation, this occurs as an integral part of a food aid transaction initiated by a relevant United Nations agency, relevant regional or international intergovernmental agency or organisation.

Comment: General provisions 2b and 2e introduce important disciplines that exclude the food aid loans as a form of export subsidy and severely circumscribe re-exportation. Where untied loans are provided for financing food imports, e.g. IDA credits as emergency recovery credits, the convention is to treat these as budgetary support, not as food aid.

a. Unless otherwise specified, the term food aid is used to refer to both **in-kind and cash-based food aid donations.**

Comment: There is a need for further clarification because in principle this distinction should be consistent with DAC definitions. These definitions recognise the potential trade distorting effects of transactions in cash which are directly financing imports so called DFI – Tied: grants that are tied either contractually or ‘in effect’ to procurement to donor country only (see below Appendix 1).

3. The provision of food aid shall take fully into account local market conditions of the same or substitute products. Members shall refrain from providing in-kind food aid in situations where this would create, or would risk to create, an adverse effect on local or regional production of the same or substitute products. Members are encouraged to procure food aid from local or regional sources to the extent possible, provided that the availability and prices of basic foodstuffs in these markets are not unduly compromised. Members commit to making their **best efforts** to move increasingly towards more cash-based food aid.

Comment: this paragraph is wholly aspirational, enjoining members to make 'best efforts'. However the commitment suggests making current practice a bench-mark against which to review progress towards untying.

Safe Box for Emergency Food Aid

4. To ensure that there is no unintended impediment to the provision of food aid during an emergency situation, food aid provided under such circumstances (whether **cash or in-kind**) shall be in the ambit of the Safe Box and, therefore, not actionable, provided that:

- (a) there has been a declaration of an emergency by the recipient country, or, the Secretary-General of the United Nations; or
- (b) there has been an emergency appeal from a country,^b a relevant United Nations agency, including the World Food Programme and the United Nations Consolidated Appeals Process; the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies; **[a relevant regional or international intergovernmental agency, a non-governmental humanitarian organisation of recognised standing traditionally working in conjunction with the former bodies];**

Comment: An important issue of agency is raised by the bracketed wording. Do the parties to the agreement wish to allow an emergency appeal by an NGO when it is not actually working in conjunction with any of the above? This is not envisaged in the wording suggested by the G20 or Cairns Groups.

- (c) there is an assessment of need undertaken by a relevant United Nations agency, including the World Food Programme; the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies^c **[a relevant regional or international intergovernmental agency, a non-governmental humanitarian organisation of recognised standing traditionally working in conjunction with the former bodies.]**

Comment: Do the parties wish to allow an assessment by an NGO when it is not actually working in conjunction with any of the above? This is not envisaged in the wording suggested by the G20 or Cairns Groups. Again as these papers suggest, there is a need for meaningful language on 'ex-post ratification under the UN' of how needs assessments to be undertaken by NGOs and recipient countries might work in practice.

b. It is understood that an NGO can be involved in this triggering whether by working with a donor or recipient country.

c. Needs assessment should be done with the involvement of the recipient government and may involve a relevant regional intergovernmental organisation or a NGO.

5. Following the triggering, there may well be a period where the needs assessment outcome is pending. For the purposes of this agreement, this period will be deemed to be [3] months in duration. During this period, the food aid concerned will in any event be non-actionable (provided that the [relevant UN agency](#) responsible for the needs assessment has not, within this period, given a negative assessment). Where, within or by the end of this period, the [relevant UN agency](#) has carried out a positive needs assessment, the food aid concerned will remain in the Safe Box thereafter.

Comment: There is an issue of consistency with para 4 because para 5 envisages that the assessment will be undertaken by a UN agency.

6. [\[There will be no monetisation for food aid inside the Safe Box.\]](#)

Comment: This is a critical restriction limiting the Safe Box to food that is to be distributed directly to affected populations. It is only envisaged that monetisation would occur where the various additional criteria in Para 10 are satisfied. Otherwise the Safe Box and, by implication, the UN definition of emergency aid would be broadened to include programme aid for sale that is not currently recognised as emergency aid. For example, a donor might offer food in-kind for sale on the understanding that the proceeds are used to fund cash transfers to final beneficiaries. It should be recalled that there is no restriction on aid in cash being monetised, subject of course to the possibility that a member may draw attention of the Committee on Agriculture (CoA) to a transaction which it considers to be involving commercial displacement.

7. A notification will be required on an ex-post basis by donors at six month intervals in order to ensure transparency.

8. The provision of food aid in conformity with paragraph 2.4 [may be provided for as long as necessary subject to an assessment of continued genuine need](#) as a result of the initial onset of the emergency. It is for the relevant UN agency to make such determination.

Comment: This wording would appear to permit the Safe Box operation to continue indefinitely provided that there is a need for food aid, as a protracted relief operation or as a safety net or social protection to those affected by the initial on-set of the emergency.

Disciplines for Food Aid in Non-emergency Situations

9. Food aid outside the Safe Box as provided above will be actionable where it leads to commercial displacement. [In-kind food aid](#) provided in situations other than defined above, and which fails to meet the following criteria, will be deemed to create such commercial displacement and thereby circumvent export subsidy commitments.

Comment: This is a key paragraph because it focuses attention on in-kind aid. This statement allows cash aid or untied aid to be provided subject only to the qualification that a member may take action in the CoA, if it considers that another member's aid is resulting in commercial displacement. This is the existing position. A new or revised procedure will be needed to replace the existing FAO CSD rules that are widely recognised to be ineffective in determining whether a transaction risks commercial displacement.

10. In kind food aid provided outside the Safe Box shall be:

- (a) based on an assessment of need by an identified multilateral third party organisation, which may include humanitarian non-governmental organisations working in partnership with specialised United Nations agencies;

Comment: The highlighted wording in 10a is in effect the only substantive change to current practice in requiring NGOs to work in partnership with the UN and so by implication in accordance with project plans/outlines that are consistent with current UN practice.

- (b) targeted to a well- identified vulnerable population group;
- (c) provided to address specific developmental objectives or nutritional requirements; and
- (d) The monetisation of in-kind food aid shall be [prohibited except][permissible, but Members will endeavour to constrain it to situations] where is it necessary to fund activities that are directly related to the delivery of the food aid to the recipient, or for the procurement of agricultural inputs. Such monetisation shall be carried out under the auspices of a relevant United Nations agency and the recipient government.

Comment: The first bracketed alternative wording is in accord with the G20 and AG positions. The second alternative is an open door leaving it to individual members to determine what they consider to be appropriate. It is also not in accord with the spirit of the G20 and AG/LDC insistence that monetisation will occur only ‘under exceptional circumstances’. The wording of 10d allows more general use of monetisation for funding ‘input supply’ than envisaged by the G20 and AG that link monetisation to procuring inputs for the final recipient. A broad interpretation of this phrasing is that it would allow fungible agricultural budgetary support. If monetisation is to be permitted to fund input supply, then there is need to clarify the precise intention through more careful wording. A clarification of ‘under the auspices’ is also required – does this mean guidance, or supervision? An assessment procedure to be used by the supervising agency for looking at potential commercial displacement and local and regional market distortion is implied but not specified.

Monitoring and Surveillance

11. Food aid donor Members shall be required to notify to the Committee on Agriculture, on an annual basis, the following data:

Comment: A realistic monitoring process should focus attention on tied aid/aid in kind. Once modalities are agreed, then there is a need for a careful technical discussion on essential information requirements and also on practicalities, since the WFP INTERFAIS reported over 7000 food aid transactions in 2005. For cash or untied aid the reporting could be limited to a statement of transactions that are already reported to WFP INTERFAIS along with the cost as reported to the OECD DAC. In the case of in-kind/tied aid included within Emergency Aid within the Safe Box could be similarly reported in a brief way. However, the exemption is open to abuse, especially after the first critical phase of an emergency. So the credibility of the Safe Box will depend on periodic and full review of its performance. In the case of non-emergency in-kind/tied aid covered by Para 10 there would be additional information to be provided in conjunction with the assessment by the UN agency providing supervision and guidance on the issues of commercial displacement and distortion to local and regional markets.

Appendix 1: OECD DAC definitions of tying status

This annex is an extract from Clay and Turner, 2007 and based on OECD DAC documentation.

1. Directly financing imports (DFI)

- a) DFI – Untied – Bilateral loans or grants whose proceeds are fully and freely available to finance procurement from substantially all aid recipient countries and from OECD countries.
- b) DFI – Partially Untied – Procurement is limited to donor and substantively all aid recipients. Bilateral loans and grants which are tied contractually or ‘in effect’ (see note) to procurement of goods and services from the donor country and from a restricted number of countries, which must include substantially all aid recipient countries.
- c) DFI – Tied: grants and loans that are tied either contractually or ‘in effect’ to procurement to donor country only. In addition this category includes official subsidies to domestic exporters that are recorded as ODA.

2. Aid in-kind

Goods which have been purchased in the donor country and are ready for consumption or use on arrival in the recipient country. Thus defined, aid in-kind is classified as tied by definition. Most, but not all, aid in-kind consists of either food aid or emergency and distress relief. However, not all food or emergency aid is necessarily in-kind.

3. Not directly financing imports (NDFI)

Items under this heading are classified as untied by definition as being wholly fungible.

- a) Budget & BOP Support: the provision of freely usable foreign exchange to the recipient.
- b) Local Cost Financing: outlays made to finance the procurement of goods and services on the local market, i.e. bought from a local enterprise which produces them, or carried in the stocks of a local enterprise for sale to all comers, irrespective of the fact that they may originally have been imported. e.g. wages and salaries made to locally recruited project personnel. Commitments to finance local costs are classified as untied since the corresponding foreign exchange is available to the recipient economy to purchase imports from whatever source it thinks fit.
- c) Debt Relief: debt reorganisation that, by enabling the recipient to forgo making service payments, makes the corresponding amount of foreign exchange freely available).
- d) Other: Contributions to non-governmental organisations and official funds in support of, or intended for, direct equity investment and that are recorded as ODA, providing that there are no formal or informal restrictions which would cause them to be considered as ‘in effect’ tied.

On the basis of these definitions untied aid would include categories 1a and all of 3 (Not Directly Financing Imports), partially untied aid includes only category 1b and tied aid includes categories 1c and 2.

Appendix 2: WTO member positions on monetisation of tied food aid

The monetisation of untied aid, which amounts to the provision of budgetary or balance of payment support has not been at issue in the DDR. There is a range of positions on the future of monetisation of tied or in-kind food aid from the EU and other European states favour the complete phasing out of monetisation to that of the USA that favours a continuation of existing forms of monetisation. This latter position implies allowing monetisation of both programme and project food aid both by recipient governments, UN agencies and NGOs, provided that there is some generally procedure in place comparable to that already set out in the FAO CSD on commercial displacement and the US legislative framework for food aid, the so-called Bellmon determination, involving an assessment to ensure that the potential negative impacts on the recipient country's agricultural markets are minimised.⁸

Other WTO members have suggested various compromises that would severely curtail monetisation:

The Africa and Least Developed Groups proposed in 2006:

'Non-emergency food aid .. may be monetised, under exceptional circumstances, to fund activities that are directly related to the delivery of the food aid to, or facilitating procurement of agriculture inputs, where necessary by the final recipients. Monetisation should only be carried out under the auspices of a UN agency and the recipient governmental authority, to ensure that there is minimal risk of commercial displacement and disincentive to local production.'

The G20 proposal in May 2007:

'Food aid may be monetised, under exceptional circumstances, to fund activities that are directly related to the delivery of the food aid to – or facilitating procurement of agriculture inputs, where necessary by – the final recipients. The G-20 reiterates that monetization should only be carried out under the auspices of a UN agency and the recipient governmental authority, to ensure that there is no risk of commercial displacement and disincentive to local production.'

The Cairns Group also in May 2007:

'The monetisation of food aid shall be prohibited except where it is carried out by or at the direction of a specialised relevant United Nations agency and the recipient government, in a way that results in no, or at most minimal, commercial displacement and disruption to local production.'

A few developing country governments, that have been or are presently beneficiaries of this form of aid, have broadly supported the continuation of the status quo. The balance of views amongst WTO members is strongly in favour of severely curtailing this practice.⁹

The conditions of the developing country groups that include both food exporters and almost all potential beneficiaries are:

- ‘exceptional circumstances’ which requires clarification This condition could imply avoiding such practices as part of normal or planned multi-year development aid or making a case of the grounds that other financial assistance is lacking.
- restricting the use of funds so generated to either funding delivery costs of food aid (which is relatively unambiguous) or facilitating procurement of agriculture inputs, where necessary by the final recipients. The second possibility is potentially ambiguous, since it could be interpreted broadly as permitting the use of the proceeds of food aid sales for the funding or subsidisation of any agricultural input supply programme.

All three compromise proposals (G20, Africa and LDCs, and Cairns) specify the joint involvement of a UN agency and the recipient government in either undertaking or supervising monetisation.

Endnotes

1. Dr E J Clay is Senior Research Associate, Overseas Development Institute, London [e.clay@odi.org.uk.] This paper is the fourth in a series of ODI IEDG Background Papers by Dr Clay on food aid within the WTO Doha Development Round offering a developmental perspective and looking for a constructive resolution of the negotiations. The previous papers are on the ODI WTO portal at: http://www.odi.org.uk/wto_portal/post_wto/food_aid.pdf
http://www.odi.org.uk/wto_portal/post_wto/clay_background2.pdf
http://www.odi.org.uk/wto_portal/post_wto/Clay_background_3.pdf
2. Chairman’s paper: Committee on Agriculture – Special Session – Revised Draft Modalities for Agriculture TN/AG/W/4 01/08/2007 07-3296 initially circulated as job128 (2) of 070721
3. Communication from the Chairman of the Committee on Agriculture Special Session, 30 April 2007 http://www.wto.org/english/tratop_e/agric_e/agchairtxt_30apro7_e.doc
4. See Clay, Edward. 2007, ‘Resolving the outstanding issues on food aid: ‘Response to the Communication from the Chairman of the Committee on Agriculture Special Session, 30 April 2007’ http://www.odi.org.uk/wto_portal/post_wto/Clay_background_3.pdf
5. WTO Committee on Agriculture Special Session, ‘G-20 REACTION ON THE AGRICULTURE CHAIR’S CHALLENGE PAPER’, JOB(07)/70, 22 May 2007 which draws heavily on the wording of the 2006 ‘Joint Submission to the WTO Doha Round Negotiating Committee on Agriculture by the African and LDC Groups on Food Aid’, WTO Committee on Agriculture Special Session, TN/AG/GEN/13, 6 March 2006
6. WTO 2007 Committee on Agriculture Special Session. ‘CAIRNS GROUP’S PROPOSAL ON FOOD AID’, JOB(07)/68 22 May 2007
7. Bridges, Vol. 11(22) 20 June 2007, <http://www.ictsd.org/weekly/07-06-20/story2.htm>
8. Non-emergency food aid ‘may be monetised to implement food security activities, targeted to chronic and acute food insecure populations. For this purpose, Member donors shall prepare for those recipients in which monetization will occur a Commercial Import Requirement (CIR). The CIR shall include a market analysis to show that the monetization of the commodity in the recipient country will not result in a disincentive to or interference with commercial import trends or create a disincentive to domestic production. The CIR shall include:
 - i. rationale for monetization;
 - ii. proposed mechanics of the monetization: commodity selection, and method of sales;
 - iii. utilisation of monetization proceeds; and

iv. plan for safeguarding the monetization proceeds.’

United States' Communication on Food Aid, WTO, Committee on Agriculture, Special Session, 7 April 2006, JOB(06)/78. Geneva.

9. There are other interested parties including some NGOs in the US-based Alliance for Food Aid for whom the practice is a significant part of their portfolio of activities that also argue in favour of retaining something broadly similar to the status quo. Significantly other international NGOs, including for example CARE which has been a substantial user of monetisation, now favour the phasing out of this practice. [Celia W. Dugger, ‘CARE Turns Down Federal Funds for Food Aid’ New York Times, August 16, 2007. http://www.nytimes.com/2007/08/16/world/africa/16food.html?_r=1&oref=slogin]

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